

U.S. Patent Application Serial No. **10/564,083**
Response filed July 30, 2010
Reply to OA dated March 30, 2010

REMARKS

The applicants thank the Examiner for holding a telephone interview with the applicants' attorney on July 27, 2010. During the interview, the attorney and the Examiner discussed the difference between the arrangements of the claimed reference patterns and the sleep patterns illustrated in Figs. 35a-35d of the Geva reference. Further, the attorney and the Examiner discussed the outstanding 35 USC 101 rejection in view of the recent Supreme Court decision in *Bilski v. Kappos*.

Claims 18-34 remain pending in this application, of which claims 18, 26 and 34 are independent claims. Claims 18, 24, 26 and 34 are hereby amended. The applicants respectfully submit that no new matter have been introduced by these amendments.

Claims 18-34 stand rejected under 35 USC 101 as being directed to non-statutory subject matter.

As discussed during the interview, the Supreme Court ruled in *Bilski v. Kappos* on June 28, 2010, that the "machine-or-transformation test" mentioned in the Federal Circuit opinion of *In re Bilski* is not the exclusive test for determining the patent subject matter eligibility of a claim. Further, the Supreme Court ruled that the correct test for Mr. Bilski's pure business method claim, which does not involve the use of a computer, to be whether the claim was directed to an "abstract idea."

The applicants respectfully note that claims 18-34 of the present application are not directed

U.S. Patent Application Serial No. **10/564,083**
Response filed July 30, 2010
Reply to OA dated March 30, 2010

to an abstract idea. Claims 18-25 are directed to a “device for confirming a validity of result of clinical examination of a part of a subject for a clinical examination, the device comprising,” among other things, a receiving unit, a storing unit, a selecting unit, a calculating unit and a determining unit, the device determining the validity of a present data in view of the previous clinical data. Further, claim 23 recites “a display unit.” The recited device determines whether a clinical data provided to the device is a valid clinical data, and can be used in clinical settings to facilitating the examination of patients. Claims 26-33 likewise recite a method for determining the validity of clinical data. Each of these claims utilizes or comprises a memory, a computer or a computing unit—a physical machine. In addition, claim 34 recites a “computer-readable medium that stores a computer program for making a computer execute” the determining of the validity of clinical data. Accordingly, as discussed during the interview, claims 18-34 are not directed to an abstract idea, and the applicants respectfully request that this rejection be withdrawn.

Claims 18, 19, 21-27 and 29-34 stand rejected under 35 USC 103(a) as obvious over Toshiba (EP 038992) in view of Geva (US 2004/0073098).

The applicants hereby amend claim 18 to recite “the reference patterns being classified into a plurality of levels and being two-dimensional image data;a calculating unit configured to calculate a value indicative of a distance between a position of the first reference pattern and a position of the second reference pattern in the reference patterns arranged two-dimensionally.” Support for the amendment can be found on page 7, lines 30-33, and page 10, lines 23-24, of the present application. Independent claims 26 and 34 have been similarly amended.

The “reference patterns” according to the present invention are each “two-dimensional image data,” and these reference patterns are classified into a plurality of levels. The distance that is calculated by the recited “calculating unit” is the distance between a position of one reference pattern that is a two-dimensional image data and a position of the second reference pattern that is also a two-dimensional image data.

As an illustration, Fig. 4 of the present application depicts an embodiment of the claimed invention. Fig. 4 depicts a “total of 144 (=12 x 12) patterns” that are classified into a plurality of levels. Each of these patterns are a “reference pattern” that is “two-dimensional image data” as shown in Fig. 5 of the present application. As explained below, none of the cited references discloses or suggests the recited reference patterns which are classified into a plurality of levels, the reference patterns each being two-dimensional image data, such that the distance between two reference patterns may be used to determine the validity of a clinical data, as now recited in independent claim 18.

The Examiner relies on Figs. 35a-35d of Geva to disclose the recited “reference patterns arranged two-dimensionally,” a calculating unit calculating a value indicative of a distance between a position of one reference pattern best matching a present data and a position of a second reference pattern best matching the previous data, as recited in claim 18. However, Figs. 35a-35d of Geva does not disclose “the reference patterns being classified into a plurality of levels and being two-dimensional image data” such that the validity of the present data may be determined based on a value indicative of the distance between a position of the first reference pattern and a position of the second reference pattern, as now recited in claim 18. Rather, paragraph [0304] of Geva states as

follows:

FIGS. 35a to 35d illustrate exemplary classification of special events, according to a preferred embodiment of the present invention. In FIG. 35a, typical K-complex is shown (marked with 'K'). In FIG. 35b, typical spindle is shown (marked with 'S'). In FIG. 35c, typical eye-blink is shown (marked with 'EB'). In FIG. 35d, typical body movement is shown (marked with 'BM').

In other words, Figs. 35a to 35d of Geva are not interrelated. Figs. 35a to 35d of Geva are four independent graphs arranged on one page. There is no technical, scientific, or medical meaning in arranging Figs. 35a-35d on one page.

Further, the "distance" between any two graphs of Figs. 35a-35d of Geva cannot be formulated in any meaningful way. It is evident from the fact that the scales of the horizontal axis of one graph has nothing to do with that of another graph. The distance between the K-complex marked with 'K' and the spindle marked with 'S' depicted in Geva has no medical significance, nor does Geva teaches calculating such a distance. The vertical component of such distance has no meaning. The blank space between Fig. 35a and 35b of Geva changes depending on who edits the drawings. The horizontal component of such distance has no significance in determining the validity of result of a clinical examination, nor do Geva and Toshiba disclose or suggest calculating such a distance.

Accordingly, the device for confirming the validity of the result of a clinical examination now

U.S. Patent Application Serial No. 10/564,083
Response filed July 30, 2010
Reply to OA dated March 30, 2010

recited in claim 18 would not have been obvious to those skilled in the art in view of Toshiba and Geva, singly or in combination. As mentioned above, independent claims 26 and 34 now also recite the “reference patterns being classified into a plurality of levels and being two-dimensional image data.” The remaining claims depend from independent claim 18, 26 or 34. Accordingly, the claimed invention would not have been obvious to those skilled in the art in view of the cited references, and the applicants respectfully request that this obviousness rejection be withdrawn.

Claims 18-34 stand rejected under 35 USC 103(a) as obvious over Toshiba and Geva, as applied to claims 18, 19, 22-27 and 30-34, and further in view of Loki et al (Japan Association of Medical Information, 2002, 14 November, 211-213).

As explained above, Geva and Toshiba fail to disclose or suggest a device for confirming the validity of result of clinical examination in which a plurality of reference patterns are classified into a plurality of levels and being “two-dimensional image data” wherein a calculating unit is configured to calculate a value indicative of a distance between a position of the first reference pattern and a position of the second reference pattern in the references patterns arranged two-dimensionally, the validity of the present data being determined based on the value indicative of the distance, as now recited in claim 18. Claims 26 and 34 were similarly amended. Loki fails to cure the deficiencies of Geva and Toshiba. Accordingly, the claimed invention would not have been obvious to those skilled in the art in view of the cited references, singly or in combination, and this obviousness rejection should be withdrawn.

There are no additional objections or rejections outstanding in this application. Accordingly,

U.S. Patent Application Serial No. 10/564,083
Response filed July 30, 2010
Reply to OA dated March 30, 2010

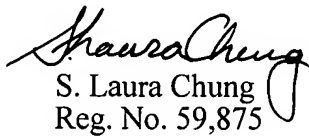
in view of the aforementioned amendments and accompanying remarks, claims 18-34, as amended, are in condition for allowance. Thus, the applicants respectfully request an early action passing this application to issue as a patent.

In the event that the Examiner determines any of the above arguments do not overcome the outstanding rejections, the Examiner is requested to contact the undersigned attorney to schedule an interview at the number provided below.

In the event that this paper is not timely filed, the applicants respectfully petition for an appropriate extension of time. Please charge any fees for such an extension of time and any other fees which may be due with respect to this paper, to Deposit Account No. 01-2340.

Respectfully submitted,

KRATZ, QUINTOS & HANSON, LLP


S. Laura Chung
Reg. No. 59,875

for Mel R. Quintos
Attorney for Applicants
Reg. No. 31,898

MRQ/LC/evb

Atty. Docket No. 050779
Suite 400
1420 K Street, N.W.
Washington, D.C. 20005
(202) 659-2930



23850

PATENT & TRADEMARK OFFICE